

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOARDS OF TRUSTEES OF THE INSURANCE,
ANNUITY, AND APPRENTICESHIP TRAINING
FUNDS OF SHEETMETAL WORKERS'
INTERNATIONAL ASSOCIATION, LOCAL UNION
NO. 137,

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Plaintiffs,

12-CV-3363 (KAM)(VMS)

-against-

FRANK TORRONE & SONS, INC.,

Defendant.

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MATSUMOTO, United States District Judge:

Plaintiffs, Boards of Trustees of the Insurance, Annuity, and Apprenticeship Training Funds of Sheetmetal Workers' International Association, Local Union No. 137 (the "Trustees" or "plaintiffs"), brought this action against Frank Torrone & Sons, Inc. ("Torrone" or "defendant"), pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132 and 1145, seeking to recover certain unpaid contributions due to employee benefit plans. (*See generally* ECF No. 1, Complaint filed 7/9/12 ("Compl.")) In addition, plaintiffs seek interest on those unpaid contributions, liquidated damages, reasonable attorney's fees, and costs. (*Id.* at ¶ 12.) On May 2, 2013, the Clerk of Court entered a certificate of defendant's default pursuant to Federal Rule of Civil Procedure 55(a). (ECF No. 6, Entry of Default dated 5/2/13.) Plaintiffs now move for entry of a default judgment

pursuant to Federal Rule of Civil Procedure 55(b). (ECF No. 10, Amended Motion for Default Judgment filed 3/1/13.) The motion was referred to Magistrate Judge Vera Scanlon for a Report and Recommendation ("R&R").

Presently before the court is the R&R issued by Magistrate Judge Scanlon on February 3, 2014, recommending this court grant plaintiffs' motion for a default judgment and enter default judgment against defendant for a total of \$9,438.70, calculated as follows: \$5,346.06 in unpaid contributions due to the benefit plans; \$1,603.82 in interest on the unpaid contributions; an additional award of \$1,603.82 in liquidated damages pursuant to 29 U.S.C. § 1132(g)(2)(C); \$450 in attorney's fees; and \$435 in costs. (ECF No. 17, Report and Recommendation dated 2/3/14 ("R&R") at 16.)

Notice of the R&R was sent electronically to the plaintiffs via the court's electronic filing system on February 3, 2014. In addition, the court mailed a copy of the R&R and full docket report to defendant on February 3, 2014. As explicitly noted at the end of the R&R, any objections to the R&R were to be filed within fourteen days of service. (R&R at 11.) The statutory period for filing objections has expired, and no objections to Magistrate Judge Scanlon's R&R have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the

findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court “need only satisfy itself that that there is no clear error on the face of the record.” *Urena v. State of New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Upon a review of the R&R, and considering that the parties have failed to object to any of Magistrate Judge Scanlon’s thorough and well-reasoned recommendations, the court finds no clear error in Magistrate Judge Scanlon’s R&R and hereby affirms and adopts the R&R as the opinion of the court. The court grants plaintiffs’ motion for default judgment and orders default judgment to be entered against defendant for a total of \$9,438.70, calculated as follows: \$5,346.06 for unpaid benefit plan contributions; \$1,603.82 in interest on the unpaid contributions; an additional award of \$1,603.82 in liquidated damages pursuant to 29 U.S.C. § 1132(g)(2)(C); \$450 in attorney’s fees; and \$435 in costs.¹

¹ The R&R prorates the amounts due to the individual funds based on the percentage due to each in unpaid contributions. (R&R at 12 n.4.) Accordingly, calculated by fund, the damages award is:

	Unpaid Contributions	Percentage for prorating	Interest (\$1,603.82 Total)	Liquidated Damages (\$1,603.82 Total)	Attorney’s Fees & Costs (\$885 Total)
Insurance Fund	\$2,788.73	52%	\$833.99	\$833.99	\$460.20
Annuity Fund	\$2,099.28	39%	\$625.49	\$6.25.49	\$345.15

Plaintiffs are directed to serve a copy of this Order and Judgment on defendant at its last known address, and file proof of service on ECF within three days of the date of this Order. The Clerk of Court is respectfully requested to enter judgment in accordance with this Order and to close this case.

SO ORDERED.

Dated: February 21, 2014
Brooklyn, New York

_____/s/_____
Kiyo A. Matsumoto
United States District Judge
Eastern District of New York

Apprenticeship Training Fund	\$458.05	9%	\$144.34	\$144.34	\$79.65
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